IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07/08/2003

CORAM

THE HONOURABLE MR.B.SUBHASHAN REDDY, CHIEF JUSTICE
AND
THE HONOURABLE MR.JUSTICE D.MURUGESAN

W.P.No.23854 of 2001
and W.P.Nos. 23880, 23881, 24238, 24239, 24863, 24865, 24875, 24901 to 24909, 24925 to 24935, 24968 to 24971, 24973 to 24977, 25000 to 2 5010, 25012 to 25027, 25045 to 25055, 25060 to 25068, 25070 to 25079, 25091 to 25098, 25102 to 25104, 25106, 25107, 25113 to 25117, 25119 to 25130, 25143 to 25147, 25149 to 25153, 25157 to 25163, 25165 to 25177, 25187 to 25189, 25191 to 25205, 25243 to 25246, 25386 to 25390, 25420 to 25425, 25427 to 25433, 25454, 25456, 25469, 25470, 25489 to 25491, 25494 to 25496, 25519 to 25521, 25529 to 25534, 25536, 25545 to 25561, 25565, 25566, 25594 to 25599, 25604 to 25608, 25611 to 25614 , 25619 to 25621, 25624 to 25628, 25632 to 25634, 25646 to 25704, 257 11, 25712, 25719 to 25730, 25732, 25734 to 25754, 25756, 25757, 25760 to 25773, 25775 to 25782, 25785, 25786, 26479 to 26490 of 2001, 29, 91 to 94, 106, 107, 138 to 150, 184, 204 to 206, 229 to 233, 243 to 2 47, 251 to 255, 260 to 264, 288 to 293, 498 to 502, 528 to 537, 547 to 562, 600 to 609, 663 to 670, 695 to 699, 727 to 742, 770, 804 to 80 9, 814, 815, 817 to 826, 829 to 833, 839 to 842, 857, 879, 886 to 892 , 923, 932 to 936, 1028 to 1034, 1045, 1050 to 1058, 1065 to 1069, 11 04, 1141, 1149 to 1154, 1163 to 1169, 1177 to 1193, 1210 to 1214, 1249 to 1254, 1266, 1275 to 1285, 1295 to 1297, 1299 to 1304, 1306 to 1310, 1312, 1345, 1346, 1381 to 1390, 1393 to 1403, 1409 to 1412, 1432 to 1448, 1454 to 1457, 1468 to 1473, 1477, 1484, 1485, 1487 to 1489, 1538 to 1544, 1568 to 1571, 1577, 1599 to 1602, 1607 to 1615, 1625 to 1628, 1633 to 1638, 1657, 1658, 1665, 1668 to 1678, 1700, 1713 to 17 17, 1788, 1893 to 1895, 1917 to 1920, 2098, 2100, 2148, 2168, 2207, 2491, 2544 to 2546, 2579 to 2583, 2698 to 2701, 2730 to 2735, 2739, 2746 to 2749, 2802, 2836, 2865, 2939 to 2943, 3004, 3005 to 3007, 3096 to 3100, 3103 to 3108, 3110, 3115 to 3121, 3137, 3216 to 3218, 3228, 3229, 3255, 3256, 3442, 3443, 3474, 3499, 3500, 3686, 3691, 3742, 3743, 3781 to 3785, 4085, 4249, 4285, 4322 to 4327, 4338, 4354, 4374, 4382 to 4385, 4408, 4409, 4413, 4416, 4510, 4665 to 4667, 4693 to 4695, 4723 to 4725, 4753, 4835, 5002, 5028, 5086 to 5088, 5257 to 5260, 52 68 to 5273, 5459, 5514 to 5517, 5567, 5573 to 5579, 5599 to 5601, 5625, 5686 to 5690, 5736 to 5741, 5772 to 5775, 5785, 5872, 5893, 5894, 6047 to 6050, 6242, 6243, 6247, 6293 to 6296, 6576 to 6580, 6667 to 6670, 6724, 6745, 6867 to 6869, 6885, 6931, 6999, 7020, 7148 to 7152, 7247, 7416, 7417, 7657, 7658, 7829, 7833, 7974, 7978 to 7983, 8253, 8254, 8471, 9336, 9685, 19149 to 19153, 21073, 22495, 22876, 22877, 22 920, 23321, 25412, 29357, 31568, 31842, 32431, 32925, 33341, 34509, 34510, 36827 to 36831 of 2002

W.P.No.23854 of 2001:

R.Srinivasan .. Petitioner

-Vs-

1. State of Tamil Nadu rep. by
Secretary
Home Department
Fort St. George
Chennai-9

2. Regional Transport Authority
Villupuram District
Villupuram .. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Declaration declaring the Tamil Nadu Motor Vehicles (Special Provisions) (Cancellation of Variation of conditions of Permit) Act, 1996 is unconstitutional, ultra vires and void and for a consequential direction to the second respondent to permit the petitioner to operate his stage carriage service bearing Regn.No.TN-57-Z-2289 on the varied route Melpattampakkam to Villupuram (via) Valavanur and Kolianoor Cross Road as per the order of the second respondent dated 9.4.96 made in R.No.16703/A2/95.

!For Petitioners:: Mr.K.Alagirisamy, learned
Senior Counsel for Mr.M.Palani,
Mr.M.Krishnappan,
Mr.C.R.Krishnamoorthy,
Mrs.Radha Gopalan,
Mr.R.S.Ramanujam,
Mr.P.Vedavalle,
Mr.T.Padmanabhan,
Mr.S.Govindraman,
Mr.R.Natesan,
Mr.S.C.Palanisamy,
Mr.V.Sanjeevi,
Mr.V.A.Sadagopan,
Mr.K.Hariharan,
Mr.S.Parthasarathy,
Mr.N.Gopalakrishnan,
Mr.K.M.Venugopal
and Mr.S.Venugopal

^For Respondents :: Mr.R.Muthukumaraswamy,
Additional Advocate General
assisted by Mr.V.Raghupathi
Government Pleader

:COMMON ORDER

D.MURUGESAN, J.

In all these writ petitions, the respective petitioners have prayed for writ of declaration declaring the Tamil Nadu Motor Vehicles (Special Provisions) (Cancellation of Variation of Conditions of Permit) Act, 1996, (Act 19 of 1996) (hereinafter referred to as the "Impugned Act") is unconstitutional, ultra vires and void and have consequently prayed for directions to the respective Regional Transport Authorities to permit the petitioners to operate their stage carriage services on the respective routes based on variations granted prior to the " Impugned Act".

2. In order to appreciate the challenge, certain facts leading to the impugned enactment must necessarily be stated. After the introduction of Chapter IV-A in the Motor Vehicles Act 1939, the State Government framed various Schemes notifying different routes during the year 1976. The Scheme enabled operators mentioned in Schedule II alone to operate apart from State Transport Undertakings. Pursuant to the publication of the draft Scheme, all other private stage carriage operators were excluded from operating any part of the notified routes. Since there was bifurcation of various routes, the State Transport Authorities issued new permits and also renewed the existing permits for those routes. Such routes also traversed part of the notified routes. New permits and renewal of the existing permits were granted on the impression that exclusion of private operators under the Scheme was partial only. The grant of new permits and the renewal of existing permits were challenged by the State Transport Undertaking on the ground that after the publication of the draft Scheme, all private stage carriage operators were excluded from operating even on any part of the notified route. The said challenge was upheld and it was declared that such permits which overlapped even a portion of the notified route were invalid. One of the operators by name M.A.Egappan who got permit to operate on a non notified route, while obtaining the renewal of permit got permission to ply on a route part of which overlapped the notified route, approached this Court, but was unsuccessful. The matter was taken to the Apex Court and the Apex Court in the judgment in "PANDIYAN ROADWAYS CORPORATION LTD. v. M.A.EGAPPAN 1987 (2) SCC 47" held that no person other than those mentioned in Annexure II to the draft Scheme can operate the stage carriage service on the entire notified route or any part thereof apart from the State Transport Undertaking. The Apex Court following the decision of a Constitution Bench in "ADARSH TRAVELS BUS SERVICE v. STATE OF U.P. (1985 (4) SCC 557)" further declared that the permits granted to stage carriage operators, which overlapped any part of the notified route were invalid. In view of the said judgment, approximately more than 4000 permits of private operators were rendered invalid.

3. The State Government was approached by such of those private operators with a grievance that even small operators having less than five permits were necessarily to take the vehicles off the road which caused hardship. The State Government considering the above plea and also taking note of the hardship and inconvenience caused to the travelling public and also the difficulty by the State or the Undertaking to replace the vehicles as it involved heavy expenditure, issued the Government Order No.2222 of 1997 sometime during July 1997 entitling the State Transport Authorities to renew t he permits of such operators and also requested the Transport Undertaking not

to oppose such renewal of permits. In fact a Bill was introduced in L.A.Bill No.42 of 1987 with an object to grant permits to small operators to ply their stage carriage on any portion of the area or the route covered by the draft Scheme or the approved Schemes. Though the said Bill was assented by the President, it was not published and hence it never came into force.

4. While the matter stood at that stage, the Motor Vehicles Act, 193 9, was repealed and the Motor Vehicles Act, 1988 (Act 59 of 1988) was enacted and the same came into force from 1.7.89. The said Act permitted pending Schemes to be published and approved within the year of expiry of which it was to lapse. Therefore the Schemes were to be approved on or before 30.6.90. In view of the Act 59 of 1988 requiring the approval of the Schemes under the Act as well the law laid down by the Apex Court in Pandiyan Roadways case, the private operators were disabled from plying on the notified route and as a necessary corollary, the Government Order No.2222 of 1987 had to be withdrawn. The State Government, therefore, issued G.O.Ms.No.1794 during August 19 90 withdrawing the earlier order no.2222 of 1987. Consequently, L.A.Bill No.42 of 1987 was repealed by an ordinance issued on 8.10.90. In view of the above developments, the small operators were once again placed with difficulty in operating their vehicles and consequently were forced to take the vehicles off the road. Batch of writ petitions were filed seeking for a direction to the State Government to publish L.A.Bill No.42 of 1987 and also challenging the validity of the Government Order issued on 8.10.90 withdrawing the earlier Government Order of 1987. All these writ petitions were dismissed by this Court. Thereafter, the Tamil Nadu Motor Vehicles (Special Provisions) Repeal Act, 1991 was passed repealing L.A.Bill No.42 of 1987. The aggrieved operators numbering approximately 4000 who were granted permits overlapping notified routes after 1976 approached the Apex Court under Article 32 of the Constitution of India for different reliefs. At that juncture, the State Government enacted the Tamil Nadu Motor Vehicles (Special Provisions) Act, 1992 (Act No.41 of 1992) validating all permits issued renewal variations granted between 4.6.76 and 30.6.9 0. By the said enactment, permits issued after 30.6.90 but before 31 .7.92 i.e., the date of publication of notification, were not validated and two classes of small operators were created in view of cutoff date. The classification was challenged by those operators who had been issued permits after 30.6.90 on the ground that cut-off date was arbitrary and there could not be any classification between classes of operators. The said contention was repelled by the High Court on the ground that the cut-off date namely 30.6.90 was rational as the Motor Vehicles Act, 1939, was repealed and the new Act came into force from 1.7.89 with a provision that the Schemes pending on the date when the Act came into force would be valid only for a period of one year namely 30.6.90 unless they were approved and published by the State Government. The said Act 41 of 1992 ultimately came up for consideration before the Apex Court in the judgment in "TMT.T.P.K. THILAGAVATHI v. REGIONAL TRANSPORT AUTHORITY, PERIYAR DISTRICT, ERODE AND OTHERS (1995 (1) SCC 456)" and the Apex Court held that no permit could have been granted after 30.6.90 and the orders rejecting the request of the operators for new permits after 30.6.90 by the State Transport Authorities were sustained.

5. All the writ petitioners are stage carriage operators. Though

they applied for variation of conditions of permits in terms of sub section (2) of section 6 of the Act 41 of 1992, those applications were not considered since the Government did not frame rules. The Tamil Nadu Motor Vehicles (Special Provisions) Rules, 1995, were framed in G.O.Ms.No.718 Home (Transport III) Department dated 18.5.95. An amendment was also made to the said Rules by notification issued in G.O. Ms.No.1935 Home (Transport III) Department dated 29.12.95 adding an explanation to Rule 4. By such amendment, certain enumerated variations were included in the explanation. A further amendment to the first proviso of sub rule (4) of Rule 4 was made in G.O.Ms.No.26 Home (Transport III) Department dated 6.1.96 by restricting the distance of variation upto 24 kms., only in respect of items (c) and (e) of the proviso to sub rule (4) of Rule 4. By the said Rules, Section 6(2) of the Act 41 of 1992 relating to variation of conditions of permits for stage carriage by enabling the permit holder to operate on the entire route or any portion of the route covered by such draft Scheme was given effect to. Rule 4 of the said Rules empowered the State Transport Authority or the Regional Transport Authority to consider the application for grant of variation subject to the condition that the distance covered by such variation shall not exceed 24 kms. Pursuant to the said rules, the requests of each of the petitioners for variations were considered and such variations were granted between 24.1.96 and 24.5.96 to as many as 2000 permit holders. The variations were granted on the ground that the applications for variations cannot be treated as grant of new permits though the procedures adopted for grant of new permits are being adopted for grant of consideration of applications for variations also in the public interest. Pursuant to the variations granted, the petitioners commenced their operation. By the Tamil Nadu Motor Vehicles (Special Provisions) (Cancellation of Variation of Conditions of Permit) Act, 1996, the variations granted to the petitioners were legislatively cancelled. By individual proceedings of the respective Transport Authorities, the petitioners were duly informed to produce the permits of stage carriage services for making cancellation of various entries. Hence, these writ petitions have been filed.

6. The Tamil Nadu Motor Vehicles (Special Provisions) (Cancellation of Variation of Conditions of Permit) Act, 1996, is challenged mainly on the ground that it lacks legislative competency, excessive legislation inasmuch as the legislature cannot overrule, set aside, cancel or declare void the judgment of competent Court or Tribunal or quasi-judicial authorities and the legislature have only the power to remove the basis of the judgment or order of the Court or Tribunal, but cannot render those judgment or order invalid.

7. We have heard in detail the arguments of Mr.K.Alagirisamy, learned Senior Counsel for Mr.M.Palani and Mr.M.Krishnappan, learned counsel for the petitioners and Mr.K.Muthukumaraswamy, learned Additional Advocate General assisted by Mr.V.Raghupathi, learned Government Pleader for the respondents. All other learned counsel appearing for the petitioners adopted the arguments of Mr.K.Alagirisamy, learned Senior Counsel.

8. Insofar as the arguments as to the legislative competency, it is to be seen that the power of the State to enact the "Impugned Act" is traceable to Entry 35 of List III of Schedule VII. Article 245 of the Constitution of India relates to the power of the Parliament to make laws for

the whole or any part of the territory of India and the legislature of a State to make laws for the whole or any part of the State. Article 246 of the Constitution of India relates to the distribution of legislative powers as between the Union and the State Legislatures with reference to List I, List II and List III of Schedule VII of the Constitution of India. The union Parliament has full and exclusive power to legislate with respect to matters in List I apart from the power to legislate with respect to the matters in List III. The State Legislature has exclusive power to legislate with respect to matters in List II and has concurrent power with respect to matters included in List III. Entry 35 of List III relates to the power of both the Parliament and the State Legislature to enact laws in respect of mechanically propelled vehicles including the principles on which taxes on such vehicles are to be levied. No doubt a law passed without legislative competence is nullity ab initio. It is also well settled that the rule of law constitutes the core of our Constitution and it is the essence of the rule of law that the exercise of power of the State, whether it be the legislature or the executive or any other authority, should be within the constitutional limitations. Based on the above principles, the challenge to the "Impugned Act" as to the legislative competency of the State Legislature should be tested. As a follow up of the judgment of the Apex Court in Pandiyan Roadways Corporation's case, large number of permits of private operators amounting to approximately 4000 in number were rendered invalid. Though the Government made an attempt to bring in a legislation by introducing L.A.Bill No.42 of 1987 with an object to grant permits to small operators to ply their stage carriage on any portion of the area or route covered by the draft Schemes or the approved Schemes, the said bill was not published though it was assented by the President. In the meantime, Motor Vehicles Act, 1988 (Act 59 of 1988) came into force and the Tamil Nadu Motor Vehicles (Special Provisions) Repeal Act, 1991 was passed repealing L.A.Bill No.42 of 1987. While the repealing Act was challenged by the operators who were granted permits overlapping the notified routes through the Federation of Operators before the Apex Court, the State Legislature enacted the Tamil Nadu Motor Vehicles (Special Provisions) Act, 1992 (Act 41 of 1992). Section 6 of the said Act relating to renewal or variation of permits came into force from 1.7.90. The said section enabled the Transport Authorities to vary the condition of permits even on routes covered by the approved Scheme. By virtue of Section 10 of the Act, all permits, renewal or transfer of such permits or any variation, modification, extension or curtailment of the route or routes specified in a stage carriage permit during the period commencing on 4.6.76 and ending with the date of publication of the Act were validated. The Apex Court in Thilagavathi's case by upholding the provisions of the Act held that no person is entitled to claim permit after 30.6.90 as the cut-off date fixed in the enactment is reasonable and justifiable, as the Act came into force on 1.7.90 and all those permits issued prior to the said enactment were validated. Thus the power of the State Legislature to enact the laws regulating the grant of permits, variations, etc., even on notified routes was upheld by the Apex Court. While the State Legislature has such a power, it must necessarily be held that the power to enact law for granting variation shall also include the power to cancel the variations already granted. In our considered view, the impugned legislation does not lack any legislative competency. Accordingly, we reject the contentions as to legislative competency of the State Legislature to enact the

impugned legislation.

9. Further question still remains for consideration is as to how far the "Impugned Act" would affect the variations granted to the petitioners pursuant to Act 41 of 1992. Before any discussion on the above issue is made, it would be also relevant to consider the submissions made by Mr.K.Alagirisamy, learned senior counsel for the petitioners in challenging the "Impugned Act" on the ground that the State Legislature cannot overrule, set aside, cancel or declare void the judgment of a competent Court or Tribunal or quasi-judicial authorities. The above question is not res integra as it has come up for consideration before the Apex Court on more than one occasion. In the judgment in 1969 (2) SCC 283) the Apex Court has held that the legislature cannot abrogate the power of Courts to nullify a decree, order or judgment. Recently, the Apex Court in the judgment in "GOVT. OF A.P. AND OTHERS v. G.V.K. GIRLS HIGH SCHOOL (2000 (8) SCC 370)", has held that it is well settled that the legislature cannot overrule a judgment by passing a law to that effect unless it removes the basis of the legal rights upon which the judgment is based with retrospective effect and provided there is no violation of any constitutional provision in such withdrawal of rights retrospectively. The grant of permit is only a quasi judicial function of the authority. In the judgment in " B.RAJAGOPAL NAIDU v. STATE TRANSPORT APPELLATE TRIBUNAL (AIR 1964 SC 1 573)", the Apex Court while considering the exercise of power by the State Transport Authority or Regional Transport Authority under Section 43-A of the Motor Vehicles Act, 1939 has held that the Tribunal constituted under the Act must be left absolutely free to deal with the matters according to their best of judgment as they discharge their quasi judicial function. Concepts of judicial act imply that the act is not wholly judicial. It describes only a duty cast on the executive body or the authority to conform to norms of judicial procedure in performing some acts in exercise of its executive power. A quasi judicial function is an administrative function which the law require to be exercised in some respects, as if it were judicial and a quasi judicial decision is therefore an administrative decision which is subject to some measure of judicial procedure.

10. In view of the fact that the Transport Authorities have discharged only quasi judicial function while granting variations to the petitioners under sub section (2) of Section 6 of Act 41 of 1992, how far such variations granted by a quasi judicial authority could be taken away by the subsequent legislation is a further question to be considered. The answer to this question is the judgment of the Andhra Pradesh High Court in "TELUGUNADA WORKCHARGED EMPLOYEES STATE FEDERATION, NALGONDA DISTRICT UNION REP. BY ITS PRESIDENT v. GOVERNMENT OF INDIA, REP. BY ITS SECRETARY, MINISTRY OF LABOUR AND EMPLOYMENT, NEW DELHI AND OTHERS (1997 (3) ALT 492" rendered by one of us The Chief Justice). That was a case where by a Government Order an award of a Tribunal was sought to be annulled. After elaborately considering the various judgments, more precisely in paragraphs 11 and 12, the Court has held as follows:-

"Our Constitution ordained democratic form of Government. It has setup three traditional instruments for administering the State affairs, i.e., (1) Legislature, (2) Executive and (3) Judiciary. The power of legislature in our Constitution is limited in three directions-(i) power to legislate on a

subject traceable to specific entry, (ii) not to violate Part-III, and (iii) not also to violate the Constitutional provisions or injunction even if it does not fall under Part-III. In State of Bihar and Others v. Bihar Distillery Ltd., Justice B.P. Jeevan Reddy, speaking for the Supreme Court held "the Court must recognize the fundamental nature and importance of legislative process and accord due regard and deference to it, just as the Legislature and the Executive are expected to show due regard and deference to the judiciary. It cannot also be forgotten that our Constitution recognizes and gives effect to the concept of equality between the three wings of the State and the concept of 'checks and balances' inherent in such scheme". The purport of the said law laid down by the Supreme Court is that the Legislature, Executive and Judiciary should act within their bounds and limitations and that one wing should not encroach upon the powers of another and that so long as the Legislature and Executive act within their power and competence, the Judiciary should not interfere in their acts or actions.
Our Constitution vests judicial powers in the Courts and Tribunals and not in the Executive. Independent judiciary is the essence of Constitution and that is clear from Article 50 and Chapter VI of Part VI thereof. The above are basic concepts of democracy and are, thus, basic features of Constitution. The Rule of Law envisages that administrative decisions should be subject to effective system of review by the Courts. The rule of law secures individual rights through the medium of an impartial judicial authority. Judiciary is one of the pillars of free society erected by rule of law designed to protect the individual from exercise of arbitrary power. Accordingly, the Courts of law are invested with essential attributes of this basic feature. The Constitution Bench of the Supreme Court in Chandramohan v. State of U.P., after emphasizing the important functions of the High Court, has held:
"????But the makers of the Constitution also realized that "it is the Subordinate Judiciary in India who are brought most closely into contact with the people, and it is no less important, perhaps indeed even more important, that their independence should be placed beyond question in the case of superior Judges." Presumably to secure the independence of the judiciary from executive, the Constitution introduced a group of Articles in Chapter VI of Part VI under the heading " Subordinate Courts". But, at the time the Constitution was made, in most of the States, the magistracy was under the direct control of the executive. Indeed, it is common knowledge that in pre-independence India there was a strong agitation that the judiciary should be separated from the executive and that the agitation was based upon the assumption that unless they were separated, the independence of the judiciary at the lower levels would be a mockery. So, Article 50 of the Directive Principles of State Policy states that the State shall take steps to separate the judiciary from the executive in the public services of the States. Simply stated, it means that there shall be a separate judicial service free from the executive control."
This was reiterated by the Supreme Court in the famous case of Kesavananda Bharathi v. State of Kerala that one of the basic structures of Constitution is separation of powers between the Legislature, the Executive and the Judiciary and the same view was further reiterated by the Supreme Court in Union of India V. Sankalchand stating that Article 50 of Indian Constitution is the conscience of the Constitution and intends immunisation of judiciary

from any form of executive control or interference. Decisions need not be multiplied and suffice it to say that our Constitutional Scheme does not permit any encroachment on the part of the executive over the judiciary and that the same is the basic feature of the Constitution and that in fact, the rule of law which is the basic structure of Constitution envisages that administrative decisions should be subject to effective system of review by the Courts."

11. It is not in dispute that all the petitioners were granted variations by the Transport Authorities exercising quasi judicial function more particularly, on the strength of sub section (2) of Section 6 of Act 41 of 1992. Such orders as to grant of variations cannot be annulled or cancelled by the impugned legislation, as it would amount to encroachment of quasi judicial functions of the authorities and consequently would take away the right conferred on any orders by such Tribunal or quasi judicial functionaries retrospectively. In this context, it would be useful to refer to the judgment of the Apex Court in "M/S RAMAN AND RAMAN LTD., v. THE STATE OF MADRAS AND OTHERS (AIR 1959 SC 694)", wherein the Apex Court has held that the rights conferred on the operators cannot be taken away retrospectively except by making a law specifying retrospective effect and within permissible limits.

12. Act 41 of 1992 was enacted with the object to make special provisions in respect of permits for stage carriages under the Motor Vehicles Act, 1988 and in relation to the Schemes and Rules notified under Chapter VI of the said Act. It should be also kept in mind that the said Act was enacted following the judgment of the Apex Court in Pandiyan Roadways case. Chapter VI of the Motor Vehicles Act, 1988 relates to special provisions relating to State Transport Undertakings. Under Section 99, the State Government is empowered to prepare and publish proposal regarding a Scheme giving particulars of the nature of services proposed to be rendered, the area or route proposed to be covered and other relevant particulars respecting thereto. Under Section 102, the State Government is empowered to cancel or modify the Scheme so published under Section 99 of the Act. Section 104 of the Act is more relevant for the disposal of these writ petitions. It relates to the restriction for grant of permits in respect of a notified area or notified route and the said section reads as under:-
"Where a scheme has been published under sub-section (3) of Section 1 00 in respect of any notified area or notified route, the State Transport Authority or the Regional Transport Authority, as the case may be, shall not grant any permit except in accordance with the provisions of the scheme:
Provided that where no application for a permit has been made by the State transport undertaking in respect of any notified area or notified route in pursuance of an approved scheme, the State Transport Authority or the Regional Transport Authority, as the case may be, may grant temporary permits to any person in respect of such notified area or notified route subject to the condition that such permit shall cease to be effective on the issue of a permit to the State Transport undertaking in respect of that area or route."

13. From the above, it is seen that the State Government though entitled to publish a Scheme notifying the area or route in the public

interest, it has power also to allow permit holders to operate on the notified route by detailing such permits in the Scheme itself. That was how when the Scheme was notified in the year 1976 for the route between Madurai and Kumily, some of the operators who were operating on the scheme route were permitted to operate as per Annexure II. While the scheme was tested before the Apex Court in Pandiyan Roadways case, the Apex Court has held that no operator except the names found in Annexure II and the State Transport Undertaking could be granted permit or variation on the notified route. To get over the difficulties experienced by more than 4000 operators who were necessarily to take their vehicles off the road, Act 41 of 1992 was enacted empowering the Transport Authorities to grant variations even on notified routes.

14. Section 3 of the Act 41 of 1992 relates to the power of the Regional Transport Authority to grant permit or renew a permit to a small operator to ply his stage carriage on the entire route or by the draft Scheme or the approved Scheme or on such operation of the route covered by the draft Scheme or approved Scheme for a specific period subject to such terms and conditions which it may in respect of matters specified in sub section (2) of Section 72 of the Motor Vehicles Act or in respect of any other matters as it thinks fit. The relevant section for the disposal of these writ petitions is sub section (2) of Section 6 of the said Act which reads as under:-

"Notwithstanding anything contained in the Motor Vehicles Act or in an approved scheme, the Regional Transport Authority may, on an application made by the small operator in accordance with the rules made in this behalf and subject to such conditions as may be prescribed, vary the conditions of a permit for a stage carriage so as to enable the applicant to operate on the entire route or any portion of the route covered by such approved scheme."

By virtue of the above provision, the Transport Authority is empowered to vary the conditions of permit for stage carriage to enable the permit holder to operate on the entire route or any portion of the route covered by such approved scheme. The provision is explicit in terms of the intention of the legislature empowering the Transport Authorities to grant variation of conditions of permit even on a route covered by draft scheme. Though such an enactment was made, the provisions could not be given effect to for want of Rules till the year 1995 when the Tamil Nadu Motor Vehicles (Special Provisions) Rules 1995 was notified on 18.5.95. Rule 4 of the Rules relates to the variation of conditions of permit. Sub rule (4) of the said Rule relates to the issue in question and the same reads as under:-

"The State Transport Authority or the Regional Transport Authority, as the case may be, may, after recording the reasons, by order grant or refuse to grant the variation sought for in the application and shall furnish a copy of such order to the person who filed the representation:

Provided that in the case of variation, the distance covered by such variation shall not exceed twenty four kilometers:

Provided further that such variation shall not have the effect of increasing the number of stage carriages as originally fixed."

In terms of sub section (2) of Section 6 read with sub rule (4) of Rule 4 of the Rules, the State Transport Authority or the Regional Transport Authority, as the case may be, were empowered to grant variations subject to the maximum distance of 24 kms. By an amendment, an explanation to rule 4 was added by a notification of the Government dated 29.12.95. By the said enactment, the

following explanation was added.
"For the purpose of the rule, variation shall mean and include:-
(a)increase in the number of trips on the entire route or part thereof
(b)reduction of singles or trips or reduction of singles on portions of the route
(c)extension of the route
(d)curtailment of the route
(e)variation by keeping the termini and deviating the course of the route which may involve creation of additional termini
(f)conversion of the town service into mofussil service and vice versa
(g)conversion of jeep and mini stage carriage services into regular stage carriage services
(h)conversion of Metropolitan service into mofussil service; and
(i)conversion of Express Service into mofussil service and vice versa."

Pursuant to the above, applications that were pending were considered and the petitioners were granted variations between the period 24.1.96 and 24.5.96. The petitioners also started operating their vehicles on the varied routes. At this juncture, an amendment was brought into as Tamil Nadu Motor Vehicles (Special Provisions) Rules, 1995 and the same was notified in G.O.Ms.No.758 Home (Transport III) Department dated 25.5.96. The said amendment reads as under:-
"In exercise of the powers conferred by sub-section (1) of Section 8, read with Section 6 of the Tamil Nadu Motor Vehicles (Special Provisions) Act, 1992 (Tamil Nadu Act 41 of 1992), the Governor of Tamil Nadu hereby makes the following amendments to the Tamil Nadu Motor Vehicles (Special Provisions) Rules 1995:-
In the said Rules, in rule 4,?
(1) in sub rule (4) for the first proviso the following proviso shall be substituted, namely:-
"Provided that in the case of variation, the distance covered by such variation shall not exceed twenty four kilometers."
(2) the explanation shall be omitted."
A plain reading of the amendment would reveal that only the explanation to rule 4 of the Tamil Nadu Motor Vehicles (Special Provisions) Rules, 1995 was omitted and the omission is only prospective.

15. Thereafter, the impugned Act 19 of 1996 was notified on 4.7.96. The relevant provisions of Section 6 of the Act reads as under:-
"Notwithstanding anything contained in the Tamil Nadu Motor Vehicles Act 1992 or in any other law for the time being in force or in any judgment, decree or order of Court, Tribunal or other authority, any condition of permit of stage carriage of a small operator varied by the Regional Transport Authority during the period commencing on the 24 th day of January 1996 and ending with the 24th day of May 1996, based on the explanation (as it stood prior to the 25th May 1996) to rule 4 of the Tamil Nadu Motor Vehicles (Special Provisions) Rules 1995, made under the provisions of the Tamil Nadu Motor Vehicles (Special Provisions Act 1992, shall stand cancelled and such permit as it stood prior to the 24th day of January 1996, shall have effect as if no such

variation has been made.
Notwithstanding anything contained in section 3, the Regional Transport Authority may, on an application, if, in any exceptional case, he is of the opinion that any variation of the conditions of permit of a stage carriage which stands cancelled under Section 3, did not result in undue hardship or suffering to the traveling public, he may restore such variation and such variation shall be deemed to be a variation made under sub section (2) of Section 6 of the Tamil Nadu Motor Vehicles (Special Provisions) Act, 1992."

A plain reading of Section 3 of the "Impugned Act", is explicitly clear that the condition of permit of stage carriage of a small operator varied by the Regional Transport Authority during the period commencing on 24.1.96 and ending on 24.5.96 based on the explanation to rule 4 of the Tamil Nadu Motor Vehicles (Special Provisions) Rules, 1995 were cancelled. Question arises as to whether when the substantive provision of sub section (2) of Section 6 entitling the Transport Authorities to grant variations is not omitted, by merely deleting the explanation added to sub rule (4) of Rule 4 of the Tamil Nadu Motor Vehicles (Special Provisions) Rules, 1995, could the State Legislature cancel the variations granted.
16. Before embarking into a discussion on the scope of the amendment omitting explanation to rule 4 of the Tamil Nadu Motor Vehicles (Special Provisions) Rules, 1995, it would be appropriate to refer to the judgment of the Apex Court in Thilagavathi's case as to the scope of Section 6 of Act 41 of 1992. While placing interpretation on various sections of Act 41 of 1992 including Section 6, the Apex Court has observed in paragraphs 7 and 8 as follows:-
"Reverting to the provision of the Act, it is slightly unusual legislation as it came into force in July 1992 yet, except Sections 6 and 7 , the remaining provisions of the Act are deemed to have come into force in 1976 and ceased to operate after 30.6.1990. The Act thus seeks to achieve dual objective-one, legislatively protecting those operators who were granted permits after 1976 under misconception by the transport authorities that the Scheme excluded other operators from " end-to-end" route only by fictionally enabling the transport authority to have issued permits notwithstanding any provision in the Scheme framed by the Undertaking. Two, it prohibited grant of any new permit after 30.6.1990 which overlapped whole or part of notified route, that is, the Legislature while accepting the interpretation placed by this Court on construction of Scheme prepared under Section 68-C legislatively removed the hurdle in grant of permits on notified route in past, validated the grant so made but prohibited any grant in future. Sections 3, 4, 5 and 10 are directed towards regularizing and validating the permits granted between 1976 and 30.6.1990, whereas Sections 6 and 7 achieve the latter objective. Section 3 is the main section. Its sub-sections (1) and (2) empower a Regional Transport Authority to grant, renew or vary conditions of permit of a small operator, which, according to the explanation to the section, means any stage carriage operator holding not more than five stage carriage permits, to ply on a notified route or part of it notwithstanding anything contained in any draft scheme. Sub-section (3) of Section 3 provides that during the period the permit referred to under sub-section (1) or (2) was in force the draft scheme shall stand modified to that extent. Sub-section (4) makes the provisions of Chapter V of the Act applicable to grant, renewal or variation of permit.

Section 5 provides that Sections 3, 4 and 6 shall have effect notwithstanding anything inconsistent therewith contained in Chapters V and VI including Section 98 of the Motor Vehicles Act. Section 10 validates the grant of permit retrospectively. Section 3 thus created power in the transport authority to grant, renew, vary or alter permit from 1976 and Section 1 0 validated such grant notwithstanding anything to the contrary in the new Act. There was no challenge by the State Transport Undertaking to these provisions by which the grant of permits in favour of the operators between 1976 and 1990 has been permitted and validated.
Section 6 like Section 3 has four sub-sections. Sub-sections (1) to (3) deal with renewal of permit or modification of condition therein in accordance with same procedure as applied to renewal or variation under Chapter V of the Act. But, sub-section (4) debars the authority from issuing any fresh permit. It reads as under:-
"Notwithstanding anything contained in this Act no new permit shall be granted under this Act to any person on any route covered by an approved scheme."
This section unlike other sections comes in operation from 30.6.1990. Thus from 30.6.1990 the Regional Transport Authority is not empowered to grant any new permit to any operator overlapping whole or part of notified route. But so far permits, grant of which has been validated by 30.6.1990, would be renewable under this section even after 3 0.6.1990. The effect of Section 6, therefore, is that those operators who were granted permits between 1976 to 30.6.1990 would be entitled to seek renewal but the authorities would not be entitled to grant fresh permit after that date. Validity of even sub-sections (1) and (2) was not challenged by the Undertaking. And sub-section (4) cannot be challenged by the appellants as it is in keeping with Chapter VI of the new Act. It is further reinforced by Section 7 which abates all proceedings pending for grant of permit on a notified route before any authority or court in appeal."

In view of the authoritative pronouncement of the Apex Court in the said judgment, the Regional Transport Authority is not empowered to grant any new permit to any operator overlapping whole or part of notified route after 30.6.90. But, so far permits, grant of which have been validated by 30.6.90, the same are renewable under Section 6 of the Act. While interpreting Section 6 of the Act, the Apex Court upheld the validity of the same by approving the power of the Regional Transport Authority to grant, renew or vary conditions of permit of small operator namely, any stage carriage operator holding not more than five stage carriage permits to ply on a notified route or part of it notwithstanding anything contained in draft scheme. We find no infirmity in the grant of variations to the petitioners pursuant to subsection (2) of Section 6 of Act 41 of 1992. Such variations granted are sought to be cancelled by the "Impugned Act" solely on the ground that explanation to rule 4 of the Tamil Nadu Motor Vehicles (Special Provisions) Rules, 1995 was omitted. The said explanation was inserted by a notification, dated 29.12.95. Though some arguments were advanced as to the definition of "variation shall mean and include", we do not find any discussion on the same is necessary in view of our finding that the said explanation is sought to be omitted only prospectively. Whenever the legislature sought to omit any provisions of law including an explanation, unless it is explicitly made clear as to the omission is made retrospectively, it must be held that such omission shall be

deemed to be prospective only. Hence, in our considered view, the variations already granted pursuant to sub-section (2) of Section 6 read with explanation to rule 4 of the Tamil Nadu Motor Vehicles (Special Provisions) Rules, 1995 are not affected by mere omission of explanation from the rules. Article 19(1)(g) of the Constitution of India protects the right of the petitioners to carry on any occupation, trade or business. Such right could be regulated by the State. The right to ply the vehicles by the petitioners is by virtue of the permits granted earlier and the consequent variations granted to them pursuant to Act 41 of 1992. Such rights cannot be infringed by the State except by law approved by the Cou rts. In this context, it is to be seen as to whether the deprival of the petitioners to operate on varied routes could be justifiable by the "Impugned Act". A reading of paragraph 3 of the "Impugned Act" is beyond doubt that the variations granted to the petitioners prior to 24.5.96 were cancelled only on the ground that they were granted by virtue of explanation to rule 4 and such explanation was omitted on 25.5.96. The basis for cancellation of variation of permits, in our considered view, is unjustifiable. The right conferred on the operators pursuant to the variations granted on the basis of the explanation cannot be infringed by omission of the explanation more particularly, prospectively. Only placing reliance on the omission of explanation by the "Impugned Act", the variations granted to the petitioners prior to 24.5.96 are sought to be cancelled. Hence, the "Impugned Act" is liable to be declared as unconstitutional, ultra vires and void.

17. In view of the above discussions, we declare the Tamil Nadu Motor Vehicles (Special Provisions) (Cancellation of variation of conditions of permit) Act, 1996 is unconstitutional, ultra vires and void. Consequently, there will be a direction to the Regional Transport Authority concerned to permit each of the petitioners to operate their stage carriage services on the respective varied routes as per the earlier orders passed pursuant to Act 41 of 1992. Accordingly, all the writ petitions are allowed and the relief prayed in each of the writ petition is granted. No costs. Consequently, all the connected W.P.M.Ps. are closed.

Index: Yes
Internet: Yes

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To

1. The Secretary to
Government of Tamil Nadu
Home Department
Fort St. George
Chennai-9

2. Regional Transport Authority
Villupuram District
Villupuram